

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 COMMODITY FUTURES TRADING COMMISSION,

5 PLAINTIFF,

6 -against- Case No.:
7 22-cv-4563 (AKH)

8 GEMINI TRUST COMPANY, LLC,

9 DEFENDANT.
10 -----X

11 DATE: February 28, 2024

12 TIME: 9:32 A.M.
13

14
15 CONFIDENTIAL VIDEOTAPED REALTIME
16 DEPOSITION of the Defendant, CAMERON
17 WINKLEVOSS, taken by the Plaintiff,
18 pursuant to a Subpoena and to the Federal
19 Rules of Civil Procedure, held at the
20 offices of Commodity Futures Trading
21 Commission (CFTC), 290 Broadway, 6th Floor,
22 New York, New York 10007, before Karyn
23 Chiusano, a Notary Public of the State of
24 New York.
25

A P P E A R A N C E S:

Commodity Futures Trading Commission
Attorneys for the Plaintiff
COMMODITY FUTURES TRADING COMMISSION
290 Broadway ~ 6th Floor
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BAUGHMAN KROUP BOSSE
Attorneys for the Defendant
GEMINI TRUST COMPANY
1 Liberty Plaza ~ 46th Floor
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BY: JACK BAUGHMAN, ESQ.
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ALSO PRESENT:

PAUL BAKER, Videographer
ELIZABETH LEE, ESQ.
DIANA WANG, ESQ.

BRETT TOMER, ESQ.

KATIE RASOR, ESQ.

DAVID OAKLAND, ESQ., via Zoom

ALEJANDRA de URIOSTE, ESQ., via Zoom

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F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

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2 And continued after college for
3 some period of time.

4 Q. All right. So, moving to still
5 in the pre-Gemini period, when did you
6 first start investing in digital
7 currencies?

8 A. In the late summer, early fall
9 of 2012.

10 Q. And are you aware of articles
11 calling you "a bitcoin billionaire"?

12 A. I -- I've seen articles with
13 headlines of that sort.

14 Q. Have you participated in any
15 articles that reported on you being a
16 bitcoin billionaire?

17 A. I guess it would depend -- it's
18 -- there's probably been a -- a number of
19 different media articles. If there is
20 something specific, where I give a quote,
21 but I -- I don't know if I can say for
22 certain, based on -- you know, without
23 looking at the article or the -- the
24 individual, who wrote it.

25 Q. Are you a bitcoin billionaire?

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2 A. I guess I haven't thought about
3 it in awhile.

4 I -- I believe so, but I --
5 yeah, I haven't really thought about it in
6 awhile.

7 Q. Do you have a rough idea of
8 what your net -- net worth is, currently?

9 MR. BAUGHMAN: What is -- what
10 is this relevant to?

11 MR. RODGERS: Please refrain,
12 counsel.

13 MR. BAUGHMAN: No.

14 I'm -- I'm asking: What is
15 this relevant to?

16 I object.

17 MR. RODGERS: Please ref- --
18 okay.

19 That's your objection.

20 Q. Sir, can you answer the
21 question?

22 MR. BAUGHMAN: I'm asking you
23 to make a proffer as to how this is
24 relevant.

25 MR. RODGERS: Please refrain.

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2 You know what the rules are.

3 MR. BAUGHMAN: And so do you.

4 MR. RODGERS: You can object.

5 MR. BAUGHMAN: And so do you.

6 MR. RODGERS: This is relevant
7 to the -- to this matter.

8 MR. BAUGHMAN: It's not.

9 MR. RODGERS: Please refrain.
10 You know the rules.

11 MR. BAUGHMAN: You can give a
12 proffer.

13 MR. RODGERS: Can you please
14 stop grandstanding in front of your
15 client?

16 I want an answer to my
17 question.

18 MR. BAUGHMAN: I'm not
19 grandstanding.

20 You know what? How is that
21 relevant?

22 Make a proffer.

23 If you can't, we will note for
24 the record that you can't.

25 Q. Sir, can you tell us what your

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2 net worth is today?

3 MR. BAUGHMAN: I direct you not
4 to answer.

5 A. I can not.

6 Q. What about in 2017, do you know
7 what your net worth was then?

8 MR. BAUGHMAN: I direct you not
9 to answer.

10 A. I can not.

11 MR. RODGERS: Can you hand me
12 Ex- -- Tab 3, please?

13 So, I'm going to mark, as
14 Exhibit 3, this is a 2017 New York
15 Times article titled:

16 "How the Winklevoss Twins Found
17 Vindication in a Bitcoin Fortune."

18 We're going to mark this as
19 Exhibit 3.

20 As I noted off the record, we
21 are going to be a little out of order
22 on the exhibits, but I think that
23 will help things move a little smooth
24 -- more smoothly today.

25 (Whereupon, New York Times

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2 Article was marked as Winklevoss

3 Exhibit 3 for identification as of

4 this date by the Reporter.)

5 MR. BAUGHMAN: Is this

6 Winklevoss Exhibit 3 or your general

7 series of --

8 MR. RODGERS: It's Exhibit 3.

9 MR. BAUGHMAN: Just Exhibit 3?

10 Okay.

11 THE WITNESS: Thank you.

12 (Witness reviews document.)

13 A. Okay.

14 Q. Okay. I just want to direct

15 your attention to the first page of the

16 article.

17 It's the fourth paragraph from
18 the bottom, it says:

19 "But the souring value of
20 bitcoin in recent months has given the
21 brothers a moment of vindication, and quite
22 a bit more than that. Their bitcoin stock
23 pile was worth around \$1.3 billion on
24 Tuesday."

25 And this article is dated

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2 December 19, 2017.

3 Is that statement accurate, Mr.
4 Winklevoss?

5 A. I -- I mean, it's been seven
6 years since that statement.

7 I mean, I have no reason to
8 believe that it's not, but I -- I don't
9 know.

10 Q. And is this an article that you
11 -- you -- does this --

12 MR. RODGERS: Withdrawn.

13 Q. Is this an article that you
14 participated in -- in -- on December, 2017?

15 MR. BAUGHMAN: Object to the
16 form of the question.

17 "Participated in?"

18 A. We -- we clearly provided
19 quotes to the article.

20 Q. And on the -- on the second
21 page, below the -- the picture, three
22 paragraphs down, it says, in the last
23 sentence of that paragraph:

24 "The brothers are also majority
25 owners of the virtual currency exchange

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2 they founded, Gemini, which most likely
3 takes their joint holdings to a value of
4 well over two billion, enough to make each
5 of them a billionaire."

6 Do you agree with that
7 statement, Mr. Winklevoss?

8 A. Which part of the statement?

9 Q. That the -- your joint holdings
10 are well over \$2 billion?

11 A. Because of ownership in -- in
12 Gemini?

13 Q. Are your joint holdings, in
14 addition to your bitcoin investments, along
15 with your investment in Gemini, well over
16 \$2 billion?

17 A. I'd have to check.

18 Q. Is this in the ballpark, you
19 think?

20 A. Again, it's been seven years,
21 but I -- I -- I mean, I'd have to check.

22 I don't have a reason to
23 believe it's necessarily wrong, I just --

24 Q. Yeah.

25 How about today, do you have a

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2 ballpark of how much Gemini is worth today?

3 MR. BAUGHMAN: Objection;

4 relevance?

5 Yet again, counsel hasn't

6 offered any relevance.

7 MR. RODGERS: You can refrain

8 from the speaking objections, Jack.

9 You know the process here. You

10 understand that I'm asking the

11 questions, I control the record.

12 MR. BAUGHMAN: No. You don't.

13 MR. RODGERS: You're not

14 permitted to give speaking

15 objections.

16 MR. BAUGHMAN: No. You don't.

17 MR. RODGERS: I understand your

18 desire to grandstand in front of your

19 client.

20 MR. BAUGHMAN: I'm not

21 grandstanding.

22 MR. RODGERS: You get to sit

23 there, and you get to object, and you

24 get to provide the basis.

25 MR. BAUGHMAN: I am --

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2 MR. RODGERS: If you don't --
3 if you continue to -- to engage in
4 this, then we will raise this with
5 the Judge.

6 MR. BAUGHMAN: That would --
7 I'd be happy to. Because it's
8 abusive, it's irrelevant. And
9 it's -- you're the one who's
10 grandstanding.

11 And please stop.

12 Get to the point of this thing.

13 MR. RODGERS: This is
14 background questions, Jack.

15 I'm not going to engage with
16 you.

17 We can engage off the record.

18 Please refrain.

19 MR. BAUGHMAN: If you'd like to
20 call the Judge, go ahead.

21 MR. RODGERS: Let's move on.

22 MR. BAUGHMAN: Go ahead.

23 Q. Do you know what Gemini is
24 worth today, roughly?

25 A. I don't.

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2 In the sense that we last
3 raised funding, I think two or three years
4 ago, and we're a privately-held company, so
5 we'd have to look at -- look into that.

6 Q. What was the valuation two or
7 three years ago?

8 A. It was \$7.1 billion post-money
9 valuation.

10 Q. Thank you.

11 So, let's turn to the -- the
12 founding of Gemini.

13 You can put that exhibit away.

14 (Witness complies.)

15 Q. So, when did you found Gemini
16 Trust Company, LLC?

17 A. The -- the initial sort of
18 formulation and idea, I believe, was in
19 2013 -- late 2013, 2014, with myself and
20 Tyler.

21 We then hired a founding team
22 in the -- the fall of -- of 2014 and
23 proceeded to build the -- the software and
24 technology for Gemini, as well as pursue a
25 license with the New York Department of

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2 Financial Services, DFS.

3 And we engaged with them for, I
4 think, 12 to 18 months, received our
5 license, in October of 2015, and launched
6 Gemini then.

7 Q. Do you know what day Gemini
8 launched, by any chance?

9 A. The exact day? I think it
10 would be probably the first Monday in
11 October.

12 And -- and the license I was
13 referring to was the New York Trust Company
14 license. So, we're chartered as a New York
15 Trust Company, under the New York banking
16 law.

17 And I believe -- I believe --
18 I'm going to say October 5th, but,
19 obviously, we can get you the exact date.

20 Q. Understand.

21 I'm not going to hold you to --
22 to that date.

23 Were there any other
24 co-founders, besides you and your brother?

25 A. We're the two co-founders.

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2 Q. And where did the money come
3 from to create Gemini?

4 A. Myself and Tyler, through --
5 via Winklevoss Capital Fund, we were the
6 initial investors.

7 Q. And what is Winklevoss Capital
8 Fund?

9 A. It's a private investment fund.

10 Q. And is Gemini its only
11 investment?

12 A. No.

13 We have many investments across
14 technology, in various industries,
15 including space and cryptocurrency.

16 Q. Are you the direct owner -- I
17 guess --

18 MR. RODGERS: Withdrawn.

19 Q. Who is the beneficial owner of
20 Winklevoss Capital Fund?

21 MR. BAUGHMAN: Objection.

22 There's no basis for these
23 questions.

24 They are not relevant to the
25 case.

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2 --

3 Q. Well, what are your titles at
4 Gemini Spaceship and Gemini Space Station?

5 MR. BAUGHMAN: You mean in 2017
6 or today?

7 MR. RODGERS: 2017.

8 A. I'm not sure if Spaceship
9 existed in 2017.

10 I can definitely answer the
11 question, with respect to Gemini Trust
12 Company, LLC.

13 Q. Well, that's what I'm getting
14 at, yeah.

15 A. Okay. I was just asking, for
16 clarification.

17 If that's the case, then my
18 title was President.

19 Q. And has that title changed?

20 Are you still President of
21 Gemini?

22 A. I'm not still President of
23 Gemini Trust Company, LLC.

24 Q. Who is President of Gemini
25 Trust Company, LLC?

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2 A. I don't know if we have a
3 President, but we have a -- there's a CEO
4 of Gemini Trust Company, LLC, as of today.

5 Q. And when did you stop being the
6 President of Gemini Trust Company, LLC?

7 A. I believe it was in April of
8 2022.

9 Q. And what is your current
10 position?

11 A. I do not have a position at
12 Gemini Trust Company, LLC.

13 Q. You're no longer -- you no
14 longer have an employment relationship; is
15 that correct?

16 A. I don't believe I'm an employee
17 or -- nor do I have a title.

18 Q. Okay. So, working back to
19 2017, I think it just would make sense so
20 that we can level set and get on the same
21 page, just go over some sort of Gemini
22 basics.

23 So, Gemini -- is it fair to say
24 Gemini operates a cryptocurrency exchange;
25 is that right?

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2 A. Among other things, but yes.

3 Q. And what is a cryptocurrency
4 exchange?

5 A. We -- in -- in the -- in the
6 simplest form: We allow people to buy,
7 sell, and store cryptocurrency.

8 Q. Is Gemini Trust Company --

9 MR. RODGERS: Withdrawn.

10 Q. Was Gemini Trust Company, LLC a
11 full reserve and highly-regulated
12 cryptocurrency exchange, in 2017?

13 A. Yes.

14 Q. And what does "full reserve"
15 mean?

16 A. In the simplest form, it means
17 that people trade with assets that they
18 have.

19 Q. "Trade with assets that they
20 have" where?

21 A. In their control, on Gemini.

22 Q. Okay. And you're familiar with
23 a -- the Gemini Bitcoin Auction; is that
24 correct?

25 A. Yes.

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2 I just would prefer to speak
3 to a specific person, if you have someone
4 in mind.

5 MR. RODGERS: Can I see Tab 4?

6 I'm going to mark, as Exhibit
7 4, a document that's Bates numbered
8 GEM_CFTC067941.

9 Unfortunately, it's small.

10 So, we are going to have to
11 test our eyesight, but --

12 (Whereupon, Org Chart was
13 marked as Winklevoss Exhibit 4 for
14 identification as of this date by the
15 Reporter.)

16 THE WITNESS: Thank you.

17 (Witness reviews document.)

18 A. Okay.

19 Q. Do you recognize this document,
20 Mr. Winklevoss?

21 A. It looks like an org chart.

22 I may have seen it before, but,
23 again, this is -- it looks like it's from
24 2017, so quite awhile ago.

25 Q. Does Gemini -- Gemini maintain

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2 updated organizational charts in the
3 ordinary course of its business?

4 A. I believe we do.

5 Q. Okay. Do you know who prepared
6 organizational charts, in 2017?

7 A. I do not.

8 Q. Do you know how the
9 organizational charts were stored or
10 maintained?

11 A. I do not.

12 Q. Looking at this organi- --
13 organizational chart, do you have any
14 reason to doubt the accuracy of it?

15 A. I do not.

16 But I -- you know, will say,
17 you know, once again, it's been awhile.

18 It -- it looks fine, but I'm
19 not entirely sure.

20 Q. Nothing jumps out to you, to
21 suggest that it's inaccurate; right?

22 A. With my quick review of the
23 document? No.

24 But perhaps, if there's
25 something specific, I just want to say that

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2 nothing, initially, I mean, I could spend
3 another minute or two reviewing it, if
4 that's helpful.

5 Q. I can direct you to areas of
6 the document.

7 A. Okay.

8 Q. And if something comes up that
9 looks inaccurate, you can let us know.

10 As you noted, the
11 organizational chart is from February 23,
12 2017. I just want to walk through the
13 chart with you, starting with the Board of
14 Managers.

15 What is the Board of Managers?

16 A. The Board of Managers is --
17 comprises the Board of Gemini Trust
18 Company, LLC, and I believe it needs to
19 have a minimum of seven Managers or Members
20 that are Managers.

21 Two -- at least five of which
22 need to be independent, as in, not
23 employees of Gemini Trust Company.

24 And I think this is per New
25 York Banking Law and DFS rules and

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2 regulations.

3 Q. And -- and you're listed here
4 as a Member of the Board of Managers?

5 A. Yes.

6 I'm -- I'm a Manager on the
7 Board of Managers.

8 Q. Okay. And it lists your --
9 above your name, it says, "President."

10 I think we've established that
11 is your role and then --

12 A. Well, that -- that might --
13 just to clarify: That might be my Board
14 title, which could be different -- in this
15 case would be the same as -- as my title at
16 Gemini Trust, but that could be an Officer
17 title on the Board, as well.

18 So, I could be President of the
19 Board, but also President of Gemini Trust
20 Company, LLC.

21 Q. Okay. And that was kind of my
22 next question because Tyler Winklevoss is
23 listed as "Vice President" of the Board of
24 Managers, but he's the Chief Executive
25 Officer of Gemini, the company.

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2 Is that a fair
3 characterization?

4 A. He -- he -- at that time, he
5 was the CEO of Gemini Trust Company, LLC.

6 Q. As well as Vice President of
7 the Board of Managers?

8 A. I believe that's correct.

9 Q. And what's -- what's the
10 difference in the role of the Board of
11 Managers versus an executive at the
12 company.

13 With "the company" being
14 Gemini.

15 A. Well, I believe that,
16 ultimately -- I think the -- the executives
17 report into the Board.

18 So, there's a -- a difference,
19 in terms of being on the Board of Managers
20 versus being an executive at the company.

21 Q. Okay. So, the Board of
22 Managers oversees the executives; is that
23 correct?

24 A. I believe it oversees the
25 company.

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2 Small reported to you?

3 A. Yes.

4 Q. Can you just take a look at

5 Chart 4?

6 MR. RODGERS: Oh, sorry.

7 Q. Exhibit 4 for me.

8 A. This is the previous chart?

9 Q. Right.

10 A. Or -- okay.

11 And you're familiar with

12 PearlStreet Financial LLC?

13 A. Yes.

14 Q. Can you tell us who, in Exhibit
15 4, worked for PearlStreet Financial LLC, in
16 February of 2017?

17 (Witness reviews document.)

18 A. When you say "worked for," what
19 do you mean by that?

20 Q. Worked on business related to
21 PearlStreet Financial LLC.

22 A. Well, I -- I -- I guess,
23 myself. I -- I worked on matters around
24 PearlStreet during that period.

25 At some point, I asked Shane

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2 Molitor to help me manage the loan
3 recordkeeping, and -- but that was -- for
4 the majority of PearlStreet, I did that
5 myself.

6 And, obviously, Benjamin Small
7 was aware of PearlStreet. I think Michael
8 Breu did not work on PearlStreet, but he
9 was aware of it, as the Chief Compliance
10 Officer, of Gemini.

11 It was certainly a -- a
12 well-known thing, it was not by any means
13 something that was hidden or kept secret.

14 But in terms of performing,
15 like, actual work? The -- I think that
16 other than Shane Molitor, helping with some
17 recordkeeping and interacting -- I guess
18 the question is, like: What does work
19 mean?

20 In the sense of, like, Ben
21 Small was aware and spoke to market
22 participants about PearlStreet loans.

23 Does that mean he worked on it
24 or how do you constitute "work"?

25 Q. Does that -- does talking to

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2 there's a direct reference to the banking
3 system not being open 24/7.

4 So, that -- that's, clearly, a
5 reference to the friction and the mismatch
6 with timing.

7 Q. And at the top of the e-mail,
8 you say:

9 "We're going to experiment with
10 allowing people to get advanced credit for
11 wires."

12 Does this refresh your
13 recollection that Gemini started
14 experimenting with advances in March of
15 2016?

16 A. I don't know the exact date.

17 Based on this document, it
18 looks like some time thereafter. We
19 clearly hadn't been doing it on March 7th.

20 Whether operational advances
21 were first used weeks or a month from then,
22 I just -- I don't know.

23 Q. Marcia says:

24 "Is there a limit as to the
25 number of days we will credit an advance?

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2 A. Gemini Trust Company was not
3 permitted to provide loans under our
4 Supervisory Agreement.

5 Q. Could Gemini provide other
6 types of financing to market participants?

7 A. Provided that had it fit within
8 the -- the bounds of the funds being
9 delivered, and, so, that we're fully --
10 fully funded, and a full reserve exchange,
11 yes.

12 Q. So, the critical component is
13 that the funds show up in the account, in
14 order for it not to constitute some form of
15 lending?

16 MR. BAUGHMAN: Object to the
17 form of the question.

18 A. Well, I don't think it's a
19 lending arrangement. I mean we can try and
20 spend some time on why that is.

21 But people -- in the simplest
22 form, people are sending funds. We have
23 evidence that they're in transit, and they
24 will be delivered, and they will settle and
25 clear.

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2 collateralized withdrawal holds eliminate
3 the necessary aspect of trust we use to
4 require advance credits."

5 And then, in the next chat,
6 Shane Molitor types:

7 "Ben Small."

8 Do you understand that to mean
9 that "Ben Small" was added to the chat?

10 A. Yes.

11 Q. Based on the next entry, it
12 says.

13 "Ben Small has joined the
14 group"?

15 A. Yes.

16 Q. And then, you say:

17 "Proof equals documentation
18 around the operational advance, i.e., not
19 credit/margin. I am less concerned about
20 the risk of the funds arriving and more
21 about the characterization."

22 So, let's unpack that a little
23 bit.

24 Why was the documentation
25 important to show that the operational

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2 advance was not credit or margin?

3 (Witness reviews document.)

4 A. I think, as I stated earlier,
5 the -- the fact of the funds, we have
6 evidence that they're arriving, and will
7 settle and clear, means that the funds are
8 not -- there's - there's not credit or a
9 margin being offered to the customer
10 because they're actually sending funds that
11 are delivered.

12 Q. And why are you concerned about
13 the characterization?

14 MR. BAUGHMAN: Object to the
15 form of the question.

16 A. Well, for starters, we were a
17 full reserve exchange. So, we don't --
18 we're not permitted to do credit or margin,
19 and so, we need delivery of -- actual
20 delivery of the funds.

21 And provided we have that, and
22 we have that evidence, then, we're
23 confident that we're not providing credit
24 or margin.

25 Q. And who would characterize the

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2 advances as "credit" or "margin"?

3 A. What do you mean -- what do you
4 mean by that?

5 Q. You say "you're more concerned
6 about characterization," but who -- who are
7 you concerned would characterize
8 operational advances as "credit" or
9 "margin"?

10 A. I guess one party we'd be
11 concerned with if DFS thought that we were
12 not adhering to our Supervisory Agreement
13 and offering something like credit or
14 margin, in contravention to our Supervisory
15 Agreement, that would not be a good thing.

16 Of course, DFS has never said
17 that.

18 Q. Did --

19 MR. BAUGHMAN: Please. Please,
20 I don't want to interfere, but don't
21 talk about what DFS said or didn't
22 say.

23 THE WITNESS: Understood.

24 Okay.

25 A. So, I will not speak any

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2 further than that.

3 But that will be one party
4 that, obviously -- we want to keep our --
5 fulfill our obligations under the -- under
6 our Supervisory Agreement.

7 Q. Were there any other entities
8 that you were concerned would characterize
9 "operational advances" as "margin" or
10 "credit," without appropriate
11 documentation?

12 (Witness reviews document.)

13 A. Well, it's -- it's -- it's not
14 what we're doing and not what we were
15 trying to do. So, it's, I think, as simple
16 as that.

17 I don't know their -- you know,
18 what's required of credit or margin to
19 offer that. That's not what we were
20 offering and not what we were trying to
21 offer.

22 And we wanted to make sure that
23 -- that these would follow, in line with
24 the operational advance, and not some other
25 characterization.

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2 Q. So, providing credit or margin
3 would have created a -- a regulatory risk
4 for Gemini; correct?

5 MR. BAUGHMAN: Object to the
6 form of the question.

7 A. It -- it could. It could.

8 Q. And as you stated earlier,
9 Gemini could not pro- -- provide credit
10 directly to its customers?

11 A. Gemini Trust Company does not.

12 Q. Is providing credit the same
13 thing as a loan?

14 A. I'd have to think about it.

15 Q. Could Gemini provide loans to
16 customers?

17 A. No.

18 Q. How were advances monitored?

19 A. A loan would require us to give
20 assets to a customer.

21 That -- that -- that is -- that
22 would be, probably, the distinction between
23 "credit" and "a loan."

24 Gemini, physically delivering
25 assets to somebody, that would be a loan.

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2 Q. The number.

3 A. The -- the number of -- of
4 digital asset, operational advances?

5 Q. Fiat and digital asset
6 advances?

7 A. I don't.

8 Q. Would that number be in the
9 thousands?

10 A. Well, if you include ACH, then,
11 I guess, there would be probably tens of
12 thousands of operational advances.

13 Q. And so, fair to say that
14 operational advances of both digital and
15 fiat currency were a regularly-conducted
16 activity in the operation of the Gemini
17 exchange?

18 MR. BAUGHMAN: Object to the
19 form of the question.

20 A. It was part of our -- our
21 business, the way we operated.

22 Operational advances were
23 clearly part of -- part of -- how funding
24 operated on the exchange.

25 Q. As a regularly-conducted

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2 that they -- that they line up and are
3 related.

4 Q. Does it take over a week for
5 the Bitcoin Network issues to resolve
6 themselves?

7 A. The Bitcoin Network would
8 presumably a -- a issue with the Bitcoin
9 Network would not, hopefully take that --
10 that long. I am -- though it's -- I mean,
11 I haven't -- I have to look at the
12 document, specifically closer.

13 The numbers correspond, but I
14 don't know if there's actually tied to
15 those two advances or not.

16 Q. Assuming that these two 500
17 bitcoin operational advances are tied to
18 the 1,000 bitcoin deposit -- or debit,
19 would this then reflect that there were --
20 there was a 500 bitcoin operational advance
21 that was outstanding for over a week?

22 MR. BAUGHMAN: Object to the
23 form.

24 A. Based on the review of this
25 document, the -- if these are related

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2 corresponding transactions, then it would
3 look like the 1,000 bitcoin Admin_Debit, on
4 February 7th, that would be more than a
5 week after the corresponding Line 498, and
6 426.

7 However, I don't know if we can
8 definitively say, at least from this
9 document alone, that it -- that it ties to
10 it, other than the math.

11 Q. Right.

12 The math adds up; right?

13 A. The math adds up, but I don't
14 know if it's referring to those two things
15 right now.

16 Q. And if the math adds up, there
17 was a 500 BTC operational advance that had
18 been outstanding on February 7th, 2017
19 since January 17th, 2017?

20 A. If these are actually related,
21 then it would look like there's a -- from
22 January 17th until February 7th, whatever
23 time period that is, would be the
24 difference.

25 But again, I don't know if

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2 these are related or if there's some other
3 accounting --

4 Q. I can tell you that I've looked
5 and I didn't find any, but we can -- let me
6 ask you this:

7 Does it take 21 days for a
8 bitcoin transfer to clear the blockchain?

9 A. Hopefully not.

10 I don't think that that would
11 be the time that it would take for a
12 blockchain -- to settle on bitcoin
13 blockchain.

14 Q. So, for 21 days, Circle had,
15 effectively, an interest-free bitcoin loan
16 -- loan from Gemini?

17 A. Again, I don't know whether
18 there was another accounting or a debit, if
19 these are actually corresponding or
20 relating to each other.

21 So, I -- I just can't --

22 Q. Let's say we can't find that
23 additional accounting, would that reflect
24 the 21-day interest-free loan?

25 MR. BAUGHMAN: Object to the

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2 April 18, 2017, for 1,250 bitcoin."

3 And the Request_Reason states:

4 "Debit from operational
5 advances provided on March 2nd and March
6 30th. And this debit was approved by
7 Cameron Winklevoss."

8 Did I get that right?

9 A. It looks like I approve Line
10 162. The amount is a debit for 1,250
11 bitcoin.

12 What -- what is your question?

13 Sorry.

14 Q. The debit was for operational
15 advances provided on March 2nd, 2017 and
16 March 10th, 2017; correct?

17 A. That's what it appears like,
18 from this language.

19 Q. So, here, we have another
20 example of Gemini providing advances that
21 were outstanding for over a month; is that
22 a fair description of -- of this entry?

23 A. Unclear from this entry if
24 there was other offsetting things that --
25 at different times or -- I just don't know

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2 the flow of funds.

3 We can look at the ledger and

4 -- and see --

5 Q. Well, if you look at -- just

6 above it, at Row 727 and 814, you see

7 credits, on March 2nd and March 30th, that

8 correspond with the total amount debited on

9 April 18th.

10 Do you see that?

11 A. I do see two credits.

12 Q. Okay. So, it's --

13 A. And, again, the numbers match

14 out. It -- you know, there could be other

15 offsetting circumstances. We can also just

16 refer to the -- whatever policies were in

17 place and try to understand that.

18 Q. So, assuming there are no

19 offsetting entries, and I can represent to

20 you in this document that there are none,

21 would this, then, reflect a bitcoin

22 operational advance that was outstanding

23 for over a month?

24 MR. BAUGHMAN: Object to the

25 form of the question.

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2 A. If there's no other
3 circumstances or offsetting debits then --
4 then it would appear that these two advance
5 -- operational advances would -- would have
6 not been debited for a couple of weeks,
7 assuming no other circumstances or
8 information that I'm not aware of.

9 Q. And "a couple of weeks," you
10 mean over a month?

11 Well, you can agree March 30th,
12 which was the last day that the admin
13 credit was provided, is a month before
14 April 18th, which is when the subsequent
15 debit occurred?

16 A. March 10th is -- is -- is a
17 month -- it -- there is more than a month
18 after March 10th to April 18th.

19 Q. Would you consider it gross
20 negligence for a -- an advance to be
21 outstanding for over a month, without a --
22 a corresponding debit?

23 A. Again, I would have to
24 understand all of the circumstances. I
25 think, you know, we could ask Mr. Molitor

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2 alone, I have no reason to believe that it
3 did not follow the policy. The issue seems
4 to be around the fact that it was not
5 debited.

6 Q. Let's take a look at 11B, Row
7 3,044.

8 (Witness complies.)

9 Q. It's on the last page, and it's
10 the fourth row from the bottom.

11 A. Sorry.

12 What number? What -- what --

13 Q. 3044.

14 Last page, fourth from bottom.

15 (Witness reviews document.)

16 Q. So, this entry reflects an
17 administrative debit, on October 3rd, 2017,
18 of the 700 BTC with a description that
19 says:

20 "Circle was provided an
21 operational advance, on July 20th, 2017,
22 for 750 bitcoin during quarterly rec- --
23 rec- -- reconciliation, it was discovered
24 that Circle did not deposit 750 BTC to
25 true-up the operational advance."

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2 Any reason to doubt the
3 statement in here that Circle never
4 deposited 750 BTC, in connection with the
5 operational advance that was provided on
6 January 20th, 2017?

7 A. It -- it looks to be the case
8 that they did not -- that this -- this
9 operational advance did not follow policy.

10 Q. And if you look up at Row
11 2,843, which is the third from the top of
12 the same page, this is the admin credit for
13 750 BTC to Circle Financial, and it shows
14 that you approved that operational advance.

15 Do you see that?

16 A. I do.

17 Q. Did you, at that time, confirm
18 that the funds were in transit, when you
19 approved the 750 BTC operational advance?

20 A. I don't know what
21 representations were made to me at the
22 time, but, clearly, I would have assumed
23 that Mr. Molitor was following the -- the
24 Operational Advance Policy, when I approved
25 this.

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2 Q. Is there a difference between
3 an operational advance and an operational
4 float?

5 A. I believe they would be talking
6 about the same thing.

7 Q. Did you have any concern that
8 by providing operational advances of fiat
9 currency and digital assets that accounts
10 on Gemini would not be pre-funded?

11 A. I think that is why we built
12 the policy such that you could ensure that
13 there was actual -- actual delivery of both
14 the fiat and -- and bitcoin.

15 So, assuming that things
16 followed policy, I would not have a
17 concern.

18 Q. Did you discuss with anyone at
19 Gemini whether operational advances
20 impacted Gemini's pre-funding requirement?

21 A. I'm not sure.

22 There may have been discussions
23 as -- as we discussed earlier, we -- we
24 obviously wanted proof of the delivery of
25 the assets, and -- and created a policy

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2 around that so that we could ensure that,
3 and that we would satisfy all of our
4 requirements of being a full reserve
5 exchange.

6 Q. So, compliance with the policy
7 was critical to Gemini customers'
8 pre-funding their account?

9 MR. BAUGHMAN: Object to the
10 form of the question.

11 A. Well, the policy did a number
12 of things.

13 It protected Gemini from being
14 defrauded or customers not sending in
15 assets, and it also insured that -- that
16 assets were actually delivered.

17 There's a cup -- there's --
18 there's many reasons why we would have a
19 policy around this.

20 Q. A policy around digital asset,
21 operational advances?

22 A. Operational advances in -- in
23 general, whether they're ACH or -- or
24 something else.

25 Q. And what type of proof was

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2 is probably just a reflection of LLC's need
3 Managers and I'm probably one of the
4 Managers.

5 Q. Did PearlStreet have any
6 employees?

7 A. I don't think so.

8 MR. BAUGHMAN: Can you move
9 over so you're in the camera?

10 THE WITNESS: Sorry.

11 Q. Did PearlStreet have its own
12 bank account?

13 A. I don't think it did, because I
14 think PearlStreet only dealt with digital
15 assets.

16 Q. Who provided funding for
17 PearlStreet?

18 A. The assets were provided, I
19 believe, by Winklevoss Capital Fund, LLC.

20 Q. And you are the beneficial
21 owner of Winklevoss Capital Fund, LLC?

22 A. I believe I'm -- it's -- I -- I
23 manage it through Winklevoss Capital
24 Management, LLC.

25 And -- I guess I would have to

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2 look at the org chart as to the ultimate
3 beneficial owner, but I'm not a direct
4 owner.

5 Q. Do you know when PearlStreet
6 was established?

7 A. I would say 2016, but I -- I
8 don't know exactly what the -- what the
9 date was.

10 That's -- that's my best guess.

11 Q. And apologies if we covered
12 this, but: Is it your testimony that you
13 are a part owner of PearlStreet?

14 A. I -- I would have to look at
15 the -- think about the corporate structure.
16 I'm -- I think I'm an ultimate beneficial
17 owner of it.

18 Whether or not I'm a direct
19 owner, I'm -- I'm not -- I'm not entirely
20 sure.

21 MR. RODGERS: I'm going to
22 mark, as Exhibit 30, a document
23 that's Bates Numbered GEM_CFTC064558.

24 (Whereupon, Due Diligence
25 Questionnaire was marked as Exhibit

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2 30 for identification as of this date
3 by the Reporter.)

4 THE WITNESS: Thank you.

5 A. Okay.

6 Q. Do you recognize this document?

7 A. I don't.

8 Q. Does it reflect a due diligence
9 questionnaire that Gemini provides to
10 potential customers?

11 A. It -- it certainly could.

12 I just don't -- don't remember
13 the document, but that could be right.

14 Q. Looking at the last page of the
15 document.

16 (Witness complies.)

17 Q. There's a "BENEFICIAL OWNER'S
18 (ENTITY)." ."

19 It has "Winklevoss Capital
20 Management, LLC."

21 A. I see that.

22 Q. And then, under "PARENT
23 OWNER/ENTITY" it has:

24 "Cameron Winklevoss, 50
25 percent; Tyler Winklevoss 50 percent."

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2 A. I see that.

3 Q. Does that reflect that you're a
4 50 percent owner -- beneficial owner of
5 PearlStreet?

6 A. I -- it looks like I'm a 50
7 percent beneficial owner, I would agree
8 with that, based on the document.

9 Q. Let's talk about the idea
10 behind PearlStreet.

11 Do you know when the concept of
12 PearlStreet first developed?

13 A. I don't know the exact timing,
14 but I believe that it was probably some
15 time in 2016. I don't know if this
16 document gives us any information on that.

17 It looks like, as a Manager,
18 from January of 2016, so it probably was in
19 that -- some time in that time period.

20 I do think that there was maybe
21 discussions around P2P lending and -- and
22 whatnot. But, ultimately, PearlStreet, you
23 know, took the form that it took.

24 Q. Prior to PearlStreet, did
25 Gemini consider the concept of providing

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2 loans to Gemini users?

3 A. We probably looked into -- I
4 think we looked into various ways to
5 potentially offer loans or P2P lending.
6 There was a number of different companies
7 at the time offering that.

8 Gemini never, ultimately, did
9 anything in that regard.

10 Q. Why did Gemini look into
11 peer-to-peer lending and loans to
12 customers?

13 A. I think at the time, Bitfinex,
14 which was probably the biggest exchange in
15 -- in the world, they had a P2P lending
16 product that was very popular.

17 And I think we may have looked
18 to see if it's something that we could --
19 we could do.

20 They, obviously, were not a New
21 York Trust Company and are not a New York
22 Trust Company, so they have different --
23 different limitations on the business.

24 Q. And was there a benefit to
25 Gemini if they could provide lending to

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2 Gemini customers?

3 A. Customers who want to lend can
4 earn yield and customers who want to borrow
5 can borrow assets that they can use in the
6 ecosystem.

7 Q. What about Gemini?

8 What is the benefit to Gemini
9 of providing credit to customers? What
10 would the benefit have been, in 2015, of
11 doing that?

12 A. Well, you, presumably, would --
13 would earn an agent fee for -- for
14 providing the service of the matching of
15 borrowers and lenders.

16 Q. Any other benefits that you can
17 think of?

18 A. Well, it really depends.

19 I mean, if the -- if the -- if
20 it's just a lending product, like one I
21 just described, then it would -- it would
22 be an agency fee model.

23 I -- I don't -- I mean, what
24 people do with the borrowed capital is --
25 is entirely -- it would be up to them, I

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2 assume.

3 They can trade on Gemini, they
4 can trade elsewhere. It depends.

5 MR. RODGERS: Can I see Tab 50

6 -- 35?

7 Q. Do you know if PearlStreet was
8 originally called Gemini Financial?

9 A. It may have been.

10 Q. And what is -- so, what was
11 Gemini Financial?

12 A. Well, I would have to look at
13 -- it would be helpful to -- to look at any
14 documents that reflect the evolution, but I
15 think it -- I think that there was an
16 exploration around providing a P2P lending
17 or bulletin board service, which may have
18 been the Gemini Financial Service that
19 could have been what we were contemplating
20 using for that -- that product.

21 However, I think that that
22 evolved into PearlStreet, because it was no
23 longer -- it became a different thing.

24 Q. And PearlStreet provided loans
25 to Gemini market participants; correct?

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2 A. I disagree, in the sense that
3 it provided loans to people who wanted to
4 borrow.

5 I think in most, if not all,
6 cases they were Gemini customers, but it
7 was a -- a lending business.

8 Q. Who did PearlStreet lend to
9 that was not a Gemini customer?

10 A. I'm -- I'm not sure if any of
11 them were not Gemini customers, but --

12 Q. So, they all were Gemini
13 customers?

14 MR. BAUGHMAN: Object to the
15 form of the question.

16 A. Again, we lend to a number of
17 participants. I think that they were --
18 most, or all of them, were Gemini
19 customers.

20 Q. And you expected that all of
21 the recipients of PearlStreet loans would
22 use the assets they received to trade on
23 Gemini and in the Gemini auction; correct?

24 A. It was -- it was a hope and an
25 expectation. I think there may have been

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2 one or two loan documents that outlined an
3 expectation, but the majority of loans did
4 not have that.

5 And I think, as I testified
6 earlier, we didn't really have a way to
7 monitor where the funds were being used.
8 They could have been traded on Gemini, but
9 they could have also been traded on another
10 venue.

11 I don't think we had
12 sophisticated tooling at the time to really
13 know where the assets were being traded.

14 Q. But if somebody did trade --

15 MR. RODGERS: Withdrawn.

16 Q. But if somebody took the
17 PearlStreet assets off of the Gemini
18 exchange, that was grounds to withdraw the
19 -- the loan; right?

20 A. I don't know if there was
21 actual language in a loan document that
22 would give us the ability to call the note.

23 I do think, though, like having
24 a general sense of where the assets are is
25 important, and has been further proven to

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2 be very important in the wake of FTX.

3 There's -- counterparty risk is
4 -- is very real in the space. If you look
5 at going as far back as Mt. Gox, you had --
6 which famously imploded with billions of
7 dollars.

8 You have got FTX.

9 Counterparty risk is -- is very
10 real. So, being mindful of where the
11 assets are would be a very natural --
12 natural concern and -- and curiosity, on
13 our part.

14 Q. Do you know if PearlStreet
15 loans increased the volume on the Gemini
16 exchange and in the Gemini auction?

17 A. I -- I think it's reasonable
18 that -- that -- I mean, it's possible that
19 some of the borrowed coin was -- was used
20 on the Gemini exchange, and used on the
21 Gemini auction, and used on the Coinbase
22 exchange and used probably on the bin- --
23 the -- the -- the FINEX exchange.

24 There's -- probably -- it was
25 probably used in a number of different

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2 places.

3 Q. Wasn't it the intention, behind
4 PearlStreet, that the loans would be
5 provided to select market participants so
6 that they could increase the volume of
7 activity on the Gemini exchange?

8 A. Certainly, a hope and
9 expectation.

10 The more -- we always want more
11 customers and we always want more activity.
12 That's how we build our business, and
13 that's how we -- we earn trading fees.

14 So, that's -- our goal has been
15 to grow our customers and our marketplace,
16 since Day 1, and that's still our goal
17 today, and we're -- we're proud of that.

18 Q. And PearlStreet was one method
19 in which you could -- Gemini could increase
20 trading volume by providing funds to
21 customers to trade on the platform; right?

22 MR. BAUGHMAN: Object to the
23 form of the question.

24 A. As I've stated before,
25 customers could certainly use borrowed coin

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2 characterize it.

3 Withdrawn.

4 Q. So, then, going to the bullet
5 point that I was going to cover:

6 "This is not a comprehensive"
7 -- I think he meant to say "list" -- "but
8 here are some strategy questions I wrote
9 down during the meeting."

10 Do you understand him to be
11 talking about a -- a Board of Managers
12 meeting here?

13 A. It could be.

14 But it could also be a little
15 less formal. It could have been a -- you
16 know, we could have caught up after a Board
17 of Managers meeting, because, again,
18 they're very heavy on process and procedure
19 as he -- as he mentions further up.

20 So, it might have been, you
21 know, before or after.

22 Q. Okay. And one of the bullet
23 points is:

24 "Margin Trading."

25 It says:

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2 "DFS will only allow Gemini
3 customers to trade on full reserve;
4 correct? Can we negotiate that and/or work
5 around it somehow?"

6 Do you see that?

7 A. I see that question.

8 Q. So, what is he -- what is he
9 suggesting in this bullet point -- point
10 about DFS?

11 A. I think he's asking if there is
12 a way to provide margin trading, given our
13 DFS charter.

14 Q. And is it correct that "full
15 reserve" means that they can- -- there's no
16 margin trading on Gemini?

17 A. I think that's accurate.

18 And I think that's a -- that's
19 -- that's the charter that we have.

20 And any change -- material
21 change that would require us to -- to speak
22 to DFS, if -- it doesn't mean they wouldn't
23 allow us to do margin, we would just have
24 to ask for an approval.

25 Q. Right.

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2 Because at this time, in 2016,
3 correct me, if I'm wrong, but I guess the
4 DFS charter did not allow or permit for
5 margin trading?

6 A. Our specific agreement did not.

7 But I think if you have seen
8 one, you have seen one. And they're all
9 pretty specific to the company that they're
10 regulating.

11 Q. He goes on to say:

12 "Seems like we could encourage
13 a lot more activity if we can take margin.
14 Even, say, 20 percent (5:1 leverage) would
15 provide a lot more juice to traders."

16 Do you see that?

17 A. I do.

18 Q. Do you agree that margin "would
19 provide more juice to traders"?

20 A. I think it's fair to say that
21 -- that margin -- if you look at any trad-
22 -- traditional finance platform, margin
23 increases people's abilities to be trade
24 their activity.

25 Q. And he says, in the next bullet

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2 So, for 51A, it's the BTC 2016
3 tab.

4 And for 20 -- 51B, it's the BTC
5 2017 tab.

6 And I'm going to start, for
7 ease of reference, with the BTC 2017
8 tab, which is 51B.

9 A. Okay.

10 Q. And my first question: Does
11 this reflect the loan matrix that we were
12 talking about?

13 A. Yes.

14 Q. And does this is reflect the
15 entities that received PearlStreet loans in
16 2017?

17 And I'm talking about Exhibit
18 51B.

19 A. Yes.

20 Q. Were there any other entities,
21 besides those listed on Exhibit 51B, that
22 received loans in the calender year 2017?

23 A. I don't think so.

24 Q. And the PearlStreet loan
25 recipients, listed on 51B, are all Gemini

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2 customers; is that correct?

3 A. Yes.

4 Q. What is XBT Opps, LLC?

5 A. It was a -- it -- it is a
6 trading firm. They might have other lines
7 of business, but I think that they had --
8 you know, they're a proprietary trading
9 firm.

10 Q. And here, on this Exhibit 51B,
11 it shows, am I reading this correct:

12 "3 bitcoin loans in the amount
13 of 1,000 bitcoin"?

14 A. I'm sorry, which -- are you --
15 which cell are you referring to?

16 Q. XBT Opps.

17 A. Okay.

18 Q. There is -- it looks like there
19 are three loan amounts for 1,000 BTC, which
20 is translated into \$2,700,000.00.

21 Do you see that?

22 A. Yes.

23 Q. And then, in -- in "Column F"
24 there's an interest rate. It's "1.5
25 percent."

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----X

3 COMMODITY FUTURES TRADING COMMISSION,

4 PLAINTIFF,

5 -against- Case No.:
6 22-cv-4563 (AKH)

7 GEMINI TRUST COMPANY, LLC,

8 DEFENDANT.

9 -----X

10
11 DATE: February 29, 2024

12 TIME: 9:36 A.M.

13
14
15 CONTINUED CONFIDENTIAL VIDEOTAPED
16 REALTIME DEPOSITION of the Defendant,
17 CAMERON WINKLEVOSS, taken by the Plaintiff,
18 pursuant to a Subpoena and to the Federal
19 Rules of Civil Procedure, held at the
20 offices of Commodity Futures Trading
21 Commission (CFTC), 290 Broadway, 6th Floor,
22 New York, New York 10007, before Karyn
23 Chiusano, a Notary Public of the State of
24 New York.

25 Job No. CS6346514

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18 ELIZABETH LEE, ESQ.
19 DIANA WANG, ESQ.

20 DAVID OAKLAND, ESQ., CFTC, via Zoom

21 ALEJANDRA de URIOSTE, CFTC, via Zoom

22 STEPHEN HITT, ESQ., JFB Legal

23 KATHERINE RASOR, ESQ.

24 BRENT TOMER, ESQ.

25 * * *

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2 2016. And it outlines the various fees and
3 rebates, based on volume and buy/sell
4 ratio.

5 Q. Again, what -- what -- I'm
6 going to focus your attention on -- on Page
7 1387, which is Page 3.

8 And -- and is it your
9 understanding that this information was
10 available on Gemini's website?

11 A. Yes.

12 Q. And this "Maker - Fee
13 Schedule," as an example, would have been
14 available to any participant on the -- in
15 the Gemini marketplace?

16 A. Correct.

17 Q. And can you explain --

18 MR. RODGERS: Sorry.

19 Q. Turning to Page 2, which is
20 Bates Numbered 173186, what -- and maybe
21 this is what you have -- explained what
22 Dynamic Fee Schedule is.

23 (Witness complies.)

24 A. I believe that the "Dynamic"
25 element refers to that it will be, I guess,

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2 re-assessed during different period --
3 periods --

4 Q. Okay.

5 A. -- of time.

6 Q. I understand. And that's
7 helpful.

8 And on Page 3, just focussing
9 on the "Maker - Fee Schedule."

10 What is a "Maker"?

11 A. I believe a Maker is someone
12 who places or -- places -- well, I'll just
13 -- I'll read the text here, since that's
14 what we wrote:

15 "A Maker order adds liquidity
16 to the marketplace, and it's called
17 'liquidity making.' The customer who
18 places it is referred to as a Maker."

19 Q. And based on this graph, or
20 chart, a Maker can either reduce the fee
21 that is charged or -- and/or obtain a
22 rebate, based on increased volume and a
23 buy/sell ratio that approaches 50/50; is
24 that -- is that accurate?

25 A. If you're -- yeah. If the

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2 buy/sell ratio is 50/50, it looks like the
3 -- you can achieve the highest rebates at
4 that ratio. And at the highest volume, you
5 can achieve the lowest fees.

6 Q. And what is a -- a rebate?

7 A. A rebate is, essentially,
8 paying someone who -- who -- who provides
9 liquidity or adds liquidity to the market.

10 And the reason they get paid is
11 because they take risk by showing liquidity
12 on the book. That has risk, as opposed to
13 takers, who take orders or take liquidity
14 off the book.

15 Liquidity makers are providing
16 a service and taking risk for that service,
17 so they're compensated in rebates.

18 And I think this is a pretty
19 common structure throughout traditional
20 finance.

21 Q. And the rebate, it -- just to
22 -- just so it's clear: The rebate is paid
23 by whom?

24 A. By Gemini, to the market
25 participant.

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2 Q. And based on the cover e-mail
3 and the date of the Policy and Procedure,
4 is it your understanding that this is the
5 Public Fee Schedule that was in place in
6 2017?

7 A. It's -- I think so, but it
8 doesn't look like maybe it was revised.

9 So, I'm not -- I -- I think so.
10 Though, there's isn't, like, a timestamp on
11 the -- the actual fee schedule.

12 Q. Yeah.

13 I was relying on your
14 statement, at the bottom of the e-mail,
15 that the trading -- the attached trading
16 schedules outlines the trading fee program
17 that we had in place at the time we
18 submitted it.

19 And you understood that you
20 submitted information to the CFTC in the
21 fall of 2017; correct?

22 A. Yeah.

23 So, maybe it's the -- maybe
24 it's the fee schedule in the fall of 2017.

25 I -- I don't know exactly --

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2 Q. Okay.

3 A. -- the timing.

4 Q. One last thing on this
5 document, it says -- below the chart,
6 there's a -- at the very bottom, it says:

7 "Note, all trades executed in
8 Gemini's daily auction." And then, there
9 is a paren: "(Link to marketplace page and
10 anchor received the liquidity making fee
11 rate.)"

12 So, what -- what does that
13 indicate?

14 A. Auction orders were -- were
15 treated as -- as liquidity making orders
16 and received that -- that fee rate.

17 Q. And so, if somebody was
18 participating in the auction, would their
19 auction volume and their buy/sell ratio be
20 included in -- in their participation on
21 the Gemini exchange, as well?

22 Would those two be consolidated
23 to determine Dynamic Fee Schedule for a
24 specific participant?

25 A. Based on this, it -- it sounds

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2 like your auction volume and your gross
3 trading volume across three order --
4 respective Order Books would all contribute
5 or count towards your -- your overall
6 volume. I think that's what it's saying.

7 Therefore, you would receive --
8 you -- you would, essentially, receive a
9 benefit from your total volume between the
10 auction and the three Order Books.

11 Q. If you look back at Exhibit 53,
12 on Page 47, which addresses the agreements
13 granting preferential terms.

14 It says -- in -- in the first
15 paragraph:

16 "Our organization may provide
17 certain high volume users, Market Makers,
18 or other special case users (priority
19 users) with certain terms different from
20 those given under the Standard User
21 Agreement."

22 Do you see -- do you see that
23 sentence?

24 MR. BAUGHMAN: I'm just
25 objecting.

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2 I don't like the word:

3 "Certain" was in with what was
4 written there.

5 MR. RODGERS: Apologies.

6 Q. Do you see the first sentence
7 of the -- the policy, Mr. Winklevoss?

8 A. Of the -- this page, 47?

9 Q. Of the agreement granting
10 Preferential Terms Policy?

11 A. Yes.

12 Q. In this agreement granting
13 Preferential Terms Policy, this applied to
14 Market Makers; correct?

15 A. It -- it looks like it does,
16 yes.

17 Q. So, if you're a Market Maker on
18 the Gemini exchange or in the Gemini
19 auction, you can earn rebates through the
20 Public Fee Schedule, as well as,
21 potentially, obtain a Side Letter to -- to
22 obtain more -- more preferential fee
23 schedule; correct?

24 A. I think any market participant
25 could ask and request a different fee

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2 schedule, in any part of the marketplace,
3 based on their needs or what they're
4 looking for to do.

5 Whether it was the Continuous
6 Order Book or -- or the auction, I think
7 that's -- that was available to anybody.

8 Q. So, there were two programs for
9 the Market Makers; there's the Public Fee
10 Schedule, and then the special deals under
11 the policy of granting preferential terms;
12 right?

13 MR. BAUGHMAN: Object to the --
14 object to the form of the question.

15 Object to the word "program."

16 A. Yeah.

17 I was going to disagree that we
18 did not have a Market Making Program.

19 We had a publicly-available
20 published Fee Schedule, and then market
21 participants could request different fees.
22 And we evaluated that on a case-by-case
23 basis.

24 Q. Okay. So, a -- a Market Maker
25 could obtain fees under the Public Fee

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2 Schedule or rebates under the Public Fee
3 Schedule, as well as obtain special deals
4 under the Preferential Treatment Policy;
5 correct?

6 A. I'm not sure I agree with
7 the -- the -- how -- how you stated that.

8 There's a publicly-available
9 Published Fee Schedule, which anybody can
10 achieve.

11 And then, separately, any
12 participant could request a different fee
13 schedule or structure. And we would
14 evaluate that on a case-by-case basis,
15 according to our policy.

16 Q. And, specifically, Market
17 Makers, as referenced in this policy, could
18 request special terms under the
19 Preferential Treatment Policy?

20 A. Anybody could.

21 Obviously some of the -- I
22 think most of the individuals were
23 liquidity providers or professional
24 traders, and people who make markets and
25 trade through venues throughout the crypto

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2 ecosystem.

3 But as I stated before, it was
4 open to anybody.

5 Q. And what is the purpose of the
6 rebate and fee override --

7 MR. RODGERS: Withdrawn.

8 Q. What is the -- the purpose of a
9 -- of the Public Fee Schedule that Gemini
10 published on its -- on its website?

11 A. I believe it's to allow
12 customers to know the fee schedule that we
13 offer.

14 Q. And then, what is the purpose
15 of the policy granting preferential terms?

16 A. To cover the instances where
17 participants request a adjustment or a
18 different fee structure, and how we handle
19 that as a company.

20 Q. In 2017, were you aware that
21 the agreement granting Preferential Terms
22 Policy was in place?

23 A. I believe so.

24 Q. Did you write the policies and
25 procedural --

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2 the fee schedule.

3 Q. And -- and can you name any
4 entities that did that, in 2017?

5 A. Off the top of my head, without
6 looking at the -- the schedule or -- or the
7 -- the different agreements? No.

8 Q. This says, in this last
9 paragraph:

10 "It is undisputed that Cameron
11 and Tyler Winklevoss were aware that fee
12 overrides existed."

13 Is that an accurate statement,
14 Mr. Winklevoss?

15 A. Yes.

16 As I stated before, this was a
17 -- you know, we had a policy for this.

18 We tried to meet our customer's
19 needs. And our goal was to, of course,
20 always grow our marketplace since Day 1.

21 Q. It says:

22 "The Winklevosses were also
23 aware that appropriate fee overrides could
24 increase volume on the exchange."

25 Is that an accurate statement,

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2 Mr. Winklevoss?

3 A. I think that, as I've -- as
4 I've stated before, as the Founder of a
5 marketplace, we're always try to grow the
6 marketplace. So, it's -- it's an accurate
7 statement.

8 And there's absolutely nothing
9 wrong with wanting to try to build your
10 business and grow volume.

11 Q. As you alluded to, I'm going to
12 switch gears and move on to the -- the
13 rebate fraud.

14 At some point, you discovered
15 that there was a multi-million dollar
16 rebate fraud occurring on Gemini; is that
17 correct?

18 A. Yes.

19 Q. Do you recall when you learned
20 about the rebate fraud?

21 A. I believe it was some time in
22 September -- either late August or
23 September of 2017.

24 MR. RODGERS: I'm going to do

25 61.

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2 (Whereupon, Slack Message was
3 marked as Exhibit 61 for
4 identification as of this date by the
5 Reporter.)

6 Q. Who was involved in the rebate
7 fraud?

8 A. There was a couple of different
9 parties.

10 Benjamin Small and Shane
11 Molidor were the individuals at Gemini that
12 were involved.

13 In addition to Danny Kim, who
14 was not at Gemini at the time, but was part
15 of the fraud, and interacting with the two
16 market participants that would trade and
17 generate rebates.

18 And -- and those entities were
19 Cardano and Hashtech. And they traded
20 against each other to defraud Gemini of
21 millions of dollars in rebates.

22 Q. And what is your understanding
23 of Danny Kim's role in the fraud?

24 A. I believe that, based on what I
25 have come to -- to learn, is that he played

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2 Q. And what is -- can you explain
3 to us what Shane is saying here, in
4 response to your request -- the question
5 about the source of the 113 bitcoin
6 negative trading fees?

7 A. When he says: "The reason
8 behind this?"

9 Q. That's right.

10 A. He's describing, generally
11 speaking, if someone with a -- well, I'll
12 just read it:

13 "The reason behind this is fee
14 overrides for sub-15 BPS taker fee, given
15 to selected accounts.

16 For example, when an account
17 with a fee override of 10 basis points,
18 taker fee trades in -- in an account with a
19 15 basis point maker rebate, Gemini incurs
20 a 5 basis point loss in the trade."

21 So, essentially, if someone --
22 if two people cross each other, and the net
23 rebate paid out is positive, then Gemini
24 will lose money on that trade because it's
25 only earning -- it's earning less in fees

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2 than paying out in rebates.

3 Q. Okay. That's what I was
4 driving at.

5 The fees charged and the
6 rebates given meant that Gemini lost money
7 on every trade between certain accounts?

8 A. And that -- yeah. And
9 that's -- that's what he's describing.

10 Q. And further down, you say:

11 "Where is the 13" --

12 MR. RODGERS: Withdrawn.

13 Q. Further down, you say:

14 "Where is the 113 bitcoin going
15 to? Who, in particular"?

16 A. Yes.

17 Q. And then, you ask:

18 "Was this an active decision to
19 subsidize and increase volume on the
20 ETC-BTC?"

21 What -- what are you asking
22 about here?

23 A. I'm trying to understand what's
24 going on. And if there's one or two
25 accounts, in particular, that are

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2 needs of our customers. We had a policy
3 around that. It was part of operating our
4 marketplace.

5 Q. Who was responsible for
6 business development in August of 2017 at
7 Gemini?

8 A. Well, I believe Shane Molitor
9 was either the Head of that or -- or a
10 Senior Member of that team.

11 And then, essentially, was
12 transitioning out of Gemini at some point
13 this month. I think he gave notice within
14 a couple of weeks before the end of August.

15 So -- but I think that he would
16 have been point on all of these customer
17 relationships.

18 Q. And at this time, did Ben --
19 Shane Molitor report to Ben Small?

20 A. I believe he did.

21 Q. So, you suspected that both Ben
22 Small and Shane Molitor were involved in
23 the rebate fraud that resulted in the July
24 trading losses; correct?

25 A. At this time, I'm trying to

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2 understand what -- what happened.

3 We have since won a \$5 million
4 judgment against Benjamin Small. And, yes,
5 they were -- they were involved.

6 Q. Was the -- the judgment based
7 on his involvement in the rebate fraud?

8 A. We can go and read the
9 judgment -- the specifics of it, but I
10 believe he was grossly negligent. And
11 clearly presided over a massive
12 multi-million dollar fraud.

13 Q. And as a result of that, was
14 Shane Molitor suspended by Gemini?

15 A. He was suspended.

16 The initial suspension, because
17 -- was, I believe, due to directing
18 business to a competitor that he was going
19 to. That was the initial basis for the
20 suspension.

21 And then, we later uncovered
22 the fraud and the fee arrangements that he
23 gave to two participants that then
24 defrauded the market.

25 Q. Did you learn about the basis

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2 for the suspension, which was -- I'm going
3 to paraphrase -- channelling business away
4 from Gemini to a competitor, as part of the
5 investigation into the rebate fraud?

6 A. I believe that they were -- we
7 suspended him based on him directing
8 business to a competitor that he was going
9 to. That was, I believe, the basis of the
10 suspension.

11 And then, as we continued to
12 dig deeper, we uncovered the rebate fraud.

13 Q. And did Shane Molitor end up
14 working for the competitor?

15 A. He did not.

16 The competitor chose not to
17 employ him, based on the -- the behavior
18 that we raised to the competitor that he
19 was steering business over to -- to them.

20 Q. And who's the competitor?

21 A. Circle.

22 Q. And Circle is the entity we
23 discussed earlier that received operational
24 advances and also PearlStreet loans?

25 MR. BAUGHMAN: Object to the

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2 form.

3 A. Circle was the customer. I
4 believe, that they got operational
5 advances. Or, rather, you know, had some.

6 And they -- what was the other
7 part of your question?

8 Q. Did they also receive
9 PearlStreet loans?

10 A. They were borrowers of
11 PearlStreet loans.

12 Q. And then, what happened to Ben
13 Small?

14 A. We suspended Ben Small on the
15 same day -- later the same day, because it
16 became clear to us that Ben had tipped off
17 Shane Molitor about the -- about his
18 pending suspension, and Ben mishandled
19 that.

20 We suspended him, and then
21 tried to understand why the Chief Operating
22 Officer would do that.

23 What would be the motivation?

24 And then, as we dug deeper, we
25 uncovered the gross negligence on his part,

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2 and the fraud that he oversaw, with Shane
3 as his direct report.

4 Q. But do you remember the date on
5 which Ben Small was suspended?

6 A. It was in -- well, it was the
7 same date -- day that Shane Molidor was
8 suspended.

9 And it was late August.

10 Q. So, let's see if we can get
11 more specific.

12 MR. RODGERS: Can I see the
13 Exhibit 66, please?

14 (Whereupon, E-mail Chain was
15 marked as Exhibit 66 for
16 identification as of this date by the
17 Reporter.)

18 MR. RODGERS: I'm going to mark
19 as Exhibit 66 a document Bates
20 Stamped GEM_CFTC165393.

21 THE WITNESS: Thanks.

22 THE COURT REPORTER: You're
23 welcome.

24 A. Okay.

25 Q. Does this -- so, this is an

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2 e-mail chain between yourself and Ben

3 Small. It's dated August 30th, 2017.

4 Does this document refresh your
5 recollection on the date that Ben Small was
6 suspended by Gemini?

7 A. Yes.

8 It looks like it was August
9 30th of 2017.

10 Q. And why was it a grounds for
11 suspension that he had informed an -- an
12 employee that he was going to be
13 terminated?

14 MR. BAUGHMAN: Object to the
15 form.

16 I -- okay. No. No.

17 Go -- go ahead.

18 Sorry.

19 A. It's highly concerning if a
20 C-level Executive is unable to -- or
21 mishandles a HR issue of this matter.

22 And we needed to understand
23 why.

24 Q. Had you had any prior issues
25 with Mr. Small's performance, prior to his

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2 suspension on August 30th, 2017?

3 A. What type of performance?

4 Like, his ability to handle an
5 HR matter or --

6 Q. Were there any other concerns,
7 on your part, with the way in which Mr.
8 Small was performing his job functions?

9 A. I think there is -- we -- I
10 think that there is one point, when I asked
11 him to, I believe, for audit reasons, file
12 information related to fee schedules.

13 And he -- I later found out
14 that he did not do that. Though, I'm not
15 sure I knew that at the time.

16 And -- but I think that the --
17 the -- his handling of this issue was --
18 was deeply concerning.

19 Q. So, the -- the sole grounds for
20 his suspension was that he tipped off Shane
21 Molitor; correct?

22 A. That was the grounds for his --
23 his suspension, his handling -- his
24 mishandling of that issue.

25 And then, we later uncovered

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2 gross negligence and the large rebate fraud
3 against Gemini.

4 Q. And what happened when you
5 terminated Ben Small?

6 MR. RODGERS: Withdrawn.

7 Q. What happened when you
8 suspended Ben Small?

9 A. Well, he -- he threatened to
10 destroy the company and retaliate against
11 the company, which he proceeded to do by
12 falling -- filing multiple false
13 whistleblower complaints, which were full
14 of lies and -- and incorrect.

15 And that's what he's been
16 doing.

17 Q. So, he threatened to destroy
18 the company by reporting -- by providing
19 information to the CFTC, when you suspended
20 him on August 30th, 2017?

21 A. No.

22 He -- during that meeting, he
23 simply said that he would destroy the
24 company. And he -- he threatened -- he was
25 very threatening, but did not go beyond

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2 different thing, and must be called out in
3 the context of a marketplace. That's not
4 what this is referring to.

5 Q. Yeah.

6 But mark- -- but Market Makers
7 could collude to manipulate the exchange,
8 and that's what you're saying here;
9 correct?

10 A. I'm not saying that.

11 Q. What did Gemini do to the
12 colluding traders?

13 A. Well, we -- we sued them.

14 We also froze their accounts,
15 and clawed back the value of the rebates
16 that they defrauded us of.

17 And they -- I believe we
18 settled the -- the arbitration, and the
19 traders gave back everything.

20 So, in a very short period of
21 time, we recovered all of the losses, and
22 that's what we did.

23 Q. In September and October of
24 2017, was -- was Gemini involved in the
25 product certification of -- of a bitcoin

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2 futures contract?

3 A. I just want to clarify: Like,
4 "involved" on what level?

5 What do you mean by that?

6 Q. Were you -- was Gemini engaged
7 with the CFE in providing information to
8 the CFTC about a proposed product listing?

9 A. We provided information to the
10 CFE. We may have also provided information
11 to the CFTC in -- as part of a -- the
12 self-certification process of the XBT
13 futures contract.

14 Q. And did you think the CFTC
15 would want to know that Gemini had detected
16 manipulation on the Gemini exchange tied to
17 Gemini's Market Maker Rebate Program?

18 MR. BAUGHMAN: Objection to the
19 form of the question.

20 A. I can't read the minds of this
21 CFTC.

22 But if they asked us a question
23 around anything related to price
24 manipulation, of course we would answer
25 that and -- and be as helpful as possible.

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2 But as I also stated earlier,
3 this was not price manipulation, this was a
4 rebate fraud.

5 Q. You knew that the disclosing
6 manipulative conduct to the CFTC would have
7 raised more questions from the CFTC?

8 MR. BAUGHMAN: Object to the
9 form of the question.

10 A. I have no reason to believe --
11 I -- I don't know what the CFTC would have
12 asked about it.

13 And if the CFTC asked -- we --
14 we answered dozens and dozens of questions
15 and multiple submissions throughout the
16 summer and fall of 2017.

17 There's never -- there was
18 never a question that went unanswered. And
19 all of our answers were complete and
20 accurate.

21 And everything in our behavior
22 demonstrates our willingness to provide
23 information on anything the CFTC requested.

24 And this was probably one of
25 the longest self-certification processes.

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2 I think, that there's been -- I think the
3 Chairman at the time, Chairman Giancarlo,
4 said as much, that it was the most
5 scrutinized and robust self-certification
6 process the CFTC has ever gone through.

7 So -- and -- and we were part
8 of that. And we were proud of -- of the
9 way we contributed. And would have
10 absolutely answered any other additional
11 questions.

12 Q. Okay. We will get to that.
13 I'm going to go over the self-certification
14 in -- in a moment.

15 I just want to get to the
16 question about disclosing manipulative
17 conduct that you knew about in September of
18 2017.

19 MR. RODGERS: So, I'm going to
20 mark an exhibit, 73, which is Bates
21 Stamped GEM_CFTC084698.

22 (Whereupon, E-mail from Jim
23 Overdahl to Cameron Winklevoss was
24 marked as Exhibit 73 for
25 identification as of this date by the

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2 Reporter.)

3 THE COURT REPORTER: Here you
4 go.

5 THE WITNESS: Thank you.

6 THE COURT REPORTER: You're
7 welcome.

8 MR. RODGERS: And for the
9 record, Exhibit 73 is an e-mail
10 between Jim Overdahl,
11 O-V-E-R-D-A-H-L, and Cameron
12 Winklevoss, CCing others, dated
13 September 1st, 2017.

14 A. Okay.

15 Q. At the bottom of this e-mail,
16 Mr. Winklevoss --

17 MR. RODGERS: Withdrawn.

18 Let me start over.

19 Q. Who is Jim Overdahl?

20 A. He worked -- works at Delta
21 Strategy, and he -- I believe, he's an
22 expert in market structure. And -- yeah,
23 that's -- that's what I think is his
24 expertise.

25 Q. Did Gemini retain Jim Overdahl

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2 in connection with the self-certification
3 of -- of the proposed bitcoin futures
4 contract?

5 A. I'm not sure if he was retained
6 prior or during, but he certainly -- I
7 think he joined some meetings with the
8 CFTC, and was -- was helpful in the
9 process.

10 Q. And what is Delta Strat?

11 A. I'm not entirely sure what the
12 -- what the organization is. I think that
13 they -- it's -- it's a strategy group, but
14 I -- I think they have market insight and
15 strategy.

16 But I'm not sure, specifically,
17 beyond that, what they do.

18 Q. And do you recognize this
19 e-mail?

20 (Witness reviews document.)

21 A. It has been a little while, but
22 it -- it looks familiar.

23 Q. Yeah.

24 And on the bottom e-mail, you
25 write in the second -- third full sentence:

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2 "Basically, they want to
3 understand auction mechanism better and how
4 it is not susceptible to manipulation."

5 Do you see that?

6 A. Yes.

7 Q. And do you understand "they" to
8 mean the CFTC?

9 A. Yes.

10 Q. And how did you know --

11 A. How- -- however, it -- it could
12 be the CFE or CBOE asking on behalf of the
13 CFTC.

14 But -- okay. Let -- let's --
15 let's assume it's the CFTC.

16 Q. So, how did you know that the
17 CFTC was focused on the auction mechanism
18 and how it is not susceptible to
19 manipulation?

20 A. It, likely, was a question, or
21 multiple questions, through different
22 questions and Q and A -- or submissions
23 that they -- or, rather, requests for
24 information that they sent, either to the
25 CFE and/or to us directly.

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2 prevention --

3 MR. RODGERS: Excuse me.

4 Q. -- in the Gemini auction?

5 A. I believe at some point, we
6 did.

7 I don't think it was there,
8 initially, but we -- we did add it.

9 Q. Did Gemini have self-trade
10 prevention between the Continuous Order
11 Book and the auction-only Order Book?

12 MR. BAUGHMAN: Object to the
13 form of the question.

14 A. So, the self-trade prevention
15 was in the Continuous Order Book and the
16 auction Order Book.

17 I don't believe there was any
18 type of mechanism in between the auction
19 and the Continuous Order Book when they
20 interacted, in part, because it is not a
21 self-cross, so to speak.

22 It's a -- the -- the auction is
23 a bulk trade that's printed, and then
24 interacts with the Continuous Order Book.

25 Q. And did you know, in November

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2 of 2017, that the Market Maker
3 participating in both books, with a decent
4 spread, may very well cross themselves
5 between the auction-only Order Book and the
6 Continuous Order Book?

7 A. I'm aware of -- of a phenomena
8 called folding. I don't know when I became
9 aware of it.

10 Probably through this -- this
11 matter -- at some point during this matter.
12 And --

13 Q. Can I pause there and ask you
14 what you mean by "this matter?"

15 A. The CFTC suing Gemini.

16 Q. Okay.

17 A. I think that the -- the folding
18 phenomena -- I don't believe -- I'm not
19 sure if there's ever examples of it. There
20 could be.

21 But as I stated before: The --
22 a self-cross implies that individuals are
23 actually able to cross themselves. And --
24 and the auction was a bulk trade or a bulk
25 print that interacted with the continuous

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2 book. And you could not, I think,
3 purposely, or with intent, try to cross
4 yourself.

5 It was a phenomena that could,
6 theoretically, occur. I don't know if we
7 ever witnessed instances of it.

8 But I don't believe that
9 constitutes a -- a self-cross.

10 Q. But you were told that a
11 self-cross may very well happen, based on
12 the nature of the way the auction is
13 executed through the Continuous Order Book?

14 A. Again, I became aware of a
15 theoretical phenomena that folks
16 identified.

17 And a determination was also
18 made, I think, in that identification that
19 it would not be possible for someone to
20 actively abuse or take advantage of, given
21 the properties that I just outlined. And
22 it doesn't constitute self- -- a
23 self-cross.

24 Q. But it could very well result
25 in a Market Maker that's participate --

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2 "Where we do not attempt
3 self-trade prevention is where the auction
4 book and the continuous book are folded
5 together during the auction, because the
6 auction fill is regarded as a bulk trade.

7 It would be impossible for a
8 Market Maker to be on both sides, but the
9 auction volume is co-mingled, so we do not
10 regard it as a self-trade."

11 Do you see that?

12 A. I do.

13 Q. And is that what you were
14 describing to me before you saw this
15 document, that the nature of this folding
16 phenomenon, where the auction is executed
17 as a bulk trade through the Continuous
18 Order Book?

19 MR. BAUGHMAN: Object to the
20 form.

21 A. This is in line with what I
22 just testified.

23 Q. And Rose Toomey is telling you
24 that: It's possible for a Market Maker to
25 be on both sides; correct?

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2 A. She says, in quote:

3 "Both sides."

4 So -- and she further clarifies
5 exactly what I was just saying, that:

6 "It's a bulk trade, we don't
7 regard it as a self-trade."

8 And for all of the reasons that
9 I just outlined.

10 Q. Who -- who told you that --
11 that this phenomenon would not result in a
12 self-trade and should not be regarded as a
13 self-trade?

14 A. I believe Rose and -- and --
15 and a number of Engineers, who are not only
16 great Engineers, but also worked -- are
17 very familiar with -- with market structure
18 and worked at firms in the electronic
19 market world or space.

20 I don't know who else they
21 spoke to, but these are very talented,
22 intelligent people. And I -- I trust their
23 judgment.

24 Q. Did you ask Jim Overdahl
25 whether executing the auction as a bulk

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2 to Dennis to discuss the folding
3 phenomenon?

4 MR. BAUGHMAN: Object to the
5 form of the question.

6 A. I -- I don't know, based on the
7 timing of that other conversation. But she
8 may not have spoken to him yet about this.

9 Q. And further down, Rose Toomey
10 says: "It's a big deal. It cannot be a
11 launch blocker. Pray."

12 What did you understand her to
13 be saying here?

14 A. It has been a while, but based
15 on what she is saying, that anything that
16 -- I think the -- the lift to make a change
17 to the auction, with respect to this, would
18 probably be a fairly large lift. And she
19 is, you know, hoping that that does not --
20 is not required.

21 I think it's as simple as that.

22 Q. Did you ever follow-up with --
23 with Rose Toomey to see if she spoke with
24 Dennis at CBOE?

25 A. I have no reason to believe

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2 that she didn't.

3 I don't know if there was a
4 direct follow-up, but I have -- I have no
5 reason -- I mean, Rose is brilliant, and
6 she is diligent, and I have no reason to
7 believe she did not talk to Dennis or other
8 folks at CBOE about this.

9 Q. Did you think the
10 implementation of self-trade prevention
11 between the Continuous Order Book and the
12 auction order book could be a launch
13 blocker?

14 MR. BAUGHMAN: Object to the
15 form of the question.

16 A. So, I -- I disagree that --
17 that there was -- it was not possible to
18 self-trade between the two -- the two --
19 there was an interaction, as we discussed,
20 about folding. About a possible
21 theoretical phenomena.

22 I don't know what Rose's
23 conversations were with Dennis, but I have
24 no reason to believe that she didn't
25 discuss her determination, and that the --

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2 the analysis done by folks on our side with
3 the CBOE.

4 We, of course, could ask
5 Dennis. That might be a good path to
6 pursue.

7 And I'm trying to think what
8 else, related to your question --

9 Q. Well, I don't think -- in
10 fairness, I don't think you answered my
11 question. So, let me just repeat it.

12 Did you think self-trade
13 prevention between the Continuous Order
14 Book and the auction order book could be a
15 launch blocker?

16 MR. BAUGHMAN: Object to the
17 form of the question.

18 A. I don't think -- I don't think
19 it was -- I don't -- I -- I don't think it
20 was.

21 Q. And the launch blocker you
22 understand to be a reference to the
23 self-certification of the bitcoin futures
24 contract?

25 MR. BAUGHMAN: Object to the

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2 identification as of this date by the
3 Reporter.)

4 THE COURT REPORTER: Here you
5 go.

6 THE WITNESS: Thank you.

7 MR. RODGERS: So, for the
8 record, Exhibit 88 is an e-mail chain
9 involving Tyler Winklevoss, copying
10 Cameron Winklevoss, dated February
11 21st, 2017.

12 Q. Have you had a chance to review
13 the e-mail, Mr. Winklevoss?

14 A. Yes.

15 Q. What do you understand to be
16 happening in this e-mail?

17 A. It sounds like the CBOE wants
18 to list more products, based on the Gemini
19 auction or the Gemini marketplace.

20 Q. And so, Tyler Winklevoss, on
21 February 20th, he's the one that reached
22 out to CBOE to share some timing on items
23 with you, and -- and checks in on the
24 status, I believe, for specs for the
25 bitcoin settled futures product.

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2 So, does this reflect Tyler
3 Winklevoss liaising with the CBOE on the
4 bitcoin futures contract?

5 MR. BAUGHMAN: Object to the
6 form.

7 A. I believe the initial
8 discussions with CBOE was to be the
9 exchange that would list our bitcoin ETF.

10 And they were working on the
11 19B4 application. And we had -- you know,
12 we were -- we decided to list the ETF, if
13 approved, on CBOE. And so, that started
14 the working relationship with them.

15 That product wasn't -- was
16 disapproved. And then, after the
17 disapproval, I believe in May of that year,
18 there or abouts, we also were talking about
19 potentially building derivative products
20 off of the Gemini marketplace.

21 Q. Who's John Deters?

22 A. I believe he was the Head of
23 Strategy at CBOE.

24 Q. And he says in an e-mail on
25 February 20th, 2017, at 9:56 P.M., the end

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2 of the first -- the second paragraph:

3 "So, you can expect us to ask
4 for your close collaboration along those
5 dimensions as we move forward."

6 What did you understand him to
7 -- to mean when he said he -- he would
8 expect to ask for -- I'm assuming "your"
9 means Gemini's -- "close collaboration?"

10 A. I think it relates to all of
11 the interaction we had working through --
12 trying to stand up the XBT futures product.

13 And it ended up, you know,
14 taking many long days and nights and
15 working through weekends to provide
16 information, and whatever was necessary to
17 help them -- assist them in, ultimately,
18 filing their application.

19 Q. And the next sentence says:

20 "Likewise, we will be looking
21 to you for support in our efforts with O --
22 OCC and the CFTC."

23 So, what's OCC?

24 A. It is a clearing -- I think
25 it's the clearing organization that CBOE

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2 uses.

3 Q. And so, he's making clear here
4 that the -- that CBOE would be looking for
5 Gemini's support in the efforts with the
6 CFTC?

7 A. Well, if we're not responsive
8 to CBOE, and we're not supportive or able
9 to give them the information they need to
10 be responsive to the CFTC, then -- then it
11 probably wouldn't work or the product would
12 get approved much later.

13 So, I think that that, again,
14 just describes the -- the engagement that
15 we had with them throughout 2017.

16 Q. And Tyler responds:

17 "Great. Sounds good. Like we
18 are all on the same page with regards to
19 moving quickly. And we look forward to
20 working closely with you to collaborate on
21 IP, et cetera, in addition to interfacing
22 with the OCC and CFTC."

23 So, is it fair to read this
24 e-mail as indicating that you and Gemini
25 understood that you would need to interface

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2 with the CFTC in connection with the
3 proposed product listing?

4 MR. BAUGHMAN: Objection.

5 You didn't read it correctly.

6 A. I'm not sure what the question
7 -- I feel like I answered this already.

8 The -- the -- it was a CBOE
9 product. We engaged with them throughout
10 2017 to be helpful and supportive in that
11 product.

12 I think at times we may have
13 interacted with the CFTC directly or as
14 part of a -- a group.

15 And I'm not sure what else your
16 asking on this topic.

17 MR. RODGERS: Well, let's move
18 on to Exhibit 89, which is a document
19 Bates Numbered GEM_CFTC092650.

20 (Whereupon, E-mail Chain was
21 marked as Exhibit 89 for
22 identification as of this date by the
23 Reporter.)

24 THE COURT REPORTER: Here you
25 go.

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2 author of this used italics to describe the
3 characteristics of something. So, instead
4 of saying market orders, it's italicized.

5 Limit orders is an order type,
6 that's italicized. Auction-only is an
7 order type, that's italicized.

8 And it looks like pre-funded is
9 describing the orders, which I think is --
10 is perhaps different than how other
11 exchanges in TradFi work, because most of
12 them are probably not pre-funded. And so,
13 it's simply referring to the fact that ours
14 is pre-funded.

15 So, I think the italicized is
16 to assist the reader in understanding
17 different characteristics of different
18 orders.

19 Q. Is pre-funded the same thing as
20 fully funded?

21 A. Well, we've used the term "full
22 reserve exchange." I think -- I don't know
23 if we've used pre-funded elsewhere, but I
24 believe that it's describing the same
25 thing.

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2 Q. And if you can turn to Page 7.

3 (Witness complies.)

4 Q. Which is Bates Numbered 92658.

5 Under the question it says:

6 "Please describe procedures to
7 eliminate or reduce the impact of
8 potentially unrepresented data in auction."

9 In the last sentence it says:

10 "Also, as discussed above, all
11 orders on Gemini must be fully funded.
12 This requirement substantially increases
13 the economic risks of attempted
14 manipulation or other nefarious activity.
15 Example: Spoofing."

16 MR. BAUGHMAN: Is there a
17 question?

18 MR. RODGERS: I'm asking if he
19 -- if he's --

20 Q. Do you see that language?

21 A. Yes.

22 Q. Okay. Did -- it's the Gemini
23 users that fully fund the orders; is that
24 right?

25 A. Correct.

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2 We are a full reserve exchange.

3 We probably -- it looks like we
4 described it as orders being also
5 pre-funded, another way to describe full
6 reserve or fully funded. They're all
7 speaking to the same thing.

8 Q. What is the connection between
9 fully funded or- -- orders and attempted
10 manipulation?

11 A. Well, I believe that the -- the
12 -- the greater the -- if -- if assets have
13 to be delivered to a venue, then that makes
14 it harder to manipulate in the sense that
15 people have to trade with physical assets
16 as opposed to getting credit or -- or
17 margin.

18 And I guess they can scale
19 their trading and -- and engage in more
20 manipulative activity.

21 Q. Do you know when you first met
22 with the CFTC, in connection with the
23 certification of the bitcoin futures
24 contract?

25 A. I believe CBOE gave a

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2 presentation in the summer of 2017, and I
3 was present during their presentation. And
4 I think Tyler was also present, as was Ben
5 Small.

6 Q. Do -- do you recall, besides
7 the Gemini representatives that you
8 mentioned, who else was in attendance at
9 the July meeting?

10 A. It's possible Ken Raisler was
11 there. I don't know for sure. It's
12 possible Jim Overdahl was there. Again, I
13 don't know for sure.

14 Q. And you mentioned a
15 presentation. Did Gemini provide any input
16 into the presentation that was made at the
17 July 2017 meeting?

18 A. Specifically? I'm not sure
19 without -- you know, I can look at the
20 presentation and try and recall or -- or
21 make a best guess.

22 I do believe that we were asked
23 questions that the CBOE had in -- in
24 leading up to the presentation. And it's
25 very possible information from their

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2 requests are part of that presentation.
3 But, ultimately, it was -- it was their
4 presentation.

5 Q. Was it one --

6 MR. BAUGHMAN: Hang on. Hang
7 on. Hang on.

8 I want to clarify what you
9 said.

10 Can you read his answer back
11 and ask him if that's what he said?

12 MR. RODGERS: Well --

13 MR. BAUGHMAN: I don't think it
14 was -- I don't think it was
15 transcribed correctly. I really
16 don't. And it's important.

17 (Whereupon, the referred to
18 Answer was read back by the Reporter:

19 "ANSWER: Specifically? I'm
20 not sure without -- you know, I can
21 look at the presentation and try and
22 recall or -- or make a best guess.

23 I do believe that we were asked
24 questions that the CBOE had in -- in
25 leading up to the presentation. And

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2 Q. And so -- and -- and I do that
3 because I want to confirm whether the
4 attachment to the e-mail reflects the
5 presentation that was provided to the CFTC
6 on July 25th, 2017?

7 A. It does seem to be the
8 presentation that's attached to the e-mail.

9 Q. And if you go to Slide 3.

10 (Witness complies.)

11 (Witness reviews document.)

12 Q. I don't think we're looking at
13 the same thing, Mr. Winklevoss.

14 A. Oh.

15 Q. It's the slide with the graph.

16 (Witness complies.)

17 Q. And can you -- can you tell me
18 what this slide shows?

19 A. This is Gemini auction volume.

20 Q. And is this data from Gemini's
21 bitcoin auctions?

22 A. I think this is the bitcoin
23 auction.

24 Q. And where did the data come
25 from in this slide?

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2 to the operational advance policy.

3 Q. And did that operational
4 advance policy apply to advances of digital
5 assets?

6 A. I believe the policy -- that
7 there was some form of policy for both.

8 Q. And is the policy that applied
9 to digital assets memorialized in a formal
10 policy and procedure?

11 A. I'm not sure.

12 Q. And was that un-memorialized
13 policy and procedure ever provided to the
14 CBOE or CFTC?

15 A. Again, I'm not sure if there
16 was a policy or not written.

17 Q. You mentioned that the special
18 deals -- and I'm summarizing -- that
19 resulted in the rebate fraud only resulted
20 in trading on the ETH USD book; is that
21 correct?

22 A. I believe that's correct.

23 Q. Were the special deals that
24 were offered to the rebate fraud
25 participants only available to participants